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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,111	06/30/2005	Stefan Bruening	37664.00020/C2347PCT/US	6131
23657	7590	10/14/2010		
FOX ROTHSCCHILD LLP 997 Lenox Drive, Bldg. #3 Lawrenceville, NJ 08648			EXAMINER COHEN, STEFANIE J	
			ART UNIT	PAPER NUMBER
			1732	
			NOTIFICATION DATE	DELIVERY MODE
			10/14/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocket@foxrothschild.com

Office Action Summary

Application No.

10/541,111

Applicant(s)

BRUENING ET AL.

Examiner

STEFANIE COHEN

Art Unit

1732

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24, 26, 28-38, 40-49, 51 and 52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24, 26, 28-38, 40-49, 51-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ ~~Notes of Informal Patent Application~~
- 6) ☐ Other: _____

DETAILED ACTION

IDS received 8/2/2010 has been considered by examiner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24, 26, 28-38, 40-43 and 51-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ansmann et al. (US Patent No. 6,365,168) in view of Fogel (US Patent No. 5,840,285).

Ansmann teaches a wax dispersion with particles 12-14 μm in diameter (col. 2, line 20) in which the wax phase comprises a dialkyl ether, an emulsifier, and water (claim 7). Ansmann teaches that the dispersion should preferably contain 0.5-2% dialkyl ether, 1-2% cationic polymer, 5-25% emulsifier (col. 6, lines 5-9), and 5-40% additives (col. 9, lines 22-24), all of which are considered part of the wax phase according to the instant specification. That gives a wax phase component of 11.5-69%, which falls within the claimed range.

Ansmann does not teach that the wax phase has a melting point between 25 and 50 °C. Fogel teaches that cosmetic solids ideally melt at body temperature (37 °C; col. 1, lines 26-27), which falls within the claimed range. It would have been obvious to one of ordinary skill in the art at the time of the invention to select the ideal melting point for the solid phase of the composition.

Regarding claim 26, Ansmann teaches the use of nonionic surfactants (emulsifiers).

Regarding claim 28, Ansmann teaches a particle size of 12-14 μm .

Regarding claim 29, it is assumed that the components used by Ansmann are essentially pure and are, therefore, free of water.

Regarding claims 30 and 31, Ansmann teaches that the composition may also include additional oil or wax components, including triglycerides (col. 6, lines 33-54; col. 8, lines 1-21).

Regarding claims 32 and 33, Ansmann teaches that the composition includes a cationic polymer such as cellulose derivatives (polysaccharides; col. 2, lines 21-23).

Regarding claim 34, Ansmann teaches that the composition may include active components (col. 6, lines 24-32).

Regarding claim 35, Ansmann teaches that the composition may include glycerol or propylene glycol (col. 8, lines 56-58), both of which are humectants.

Regarding claim 36, Ansmann teaches that the dispersion should preferably contain 0.5-2% dialkyl ether, 1-2% cationic polymer, 5-25% emulsifier (col. 6, lines 5-9), and 5-40% additives (col. 9, lines 22-24), all of which are considered part of the wax phase according to the instant specification. That gives a wax phase component of 11.5-69%, which overlaps the claimed range, with the balance water. Ansmann also teaches that the additives may include oils, superfatting agents, and waxes (col. 6, lines 24-32).

Ansmann and the claims differ in that Ansmann does not teach the exact same composition ranges as recited in the instant claims.

However, one of ordinary skill in the art at the time the invention was made would have considered the invention to have been obvious because the ranges taught by Ansmann overlap the instantly claimed ranges and therefore are considered to establish a prima facie case of obviousness. It would have been obvious to one of ordinary skill in the art to select any portion of the ranges disclosed in the prior art reference, including

the instantly claimed ranges, particularly in view of the fact that;

"The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages", In re Peterson 65 USPQ2d 1379 (CAFC 2003).

Also, In re Geisler 43 USPQ2d 1365 (Fed. Cir. 1997); In re Woodruff, 16 USPQ2d 1934 (CCPA 1976); In re Malaqari, 182 USPQ 549, 553 (CCPA 1974) and MPEP 2144.05.

Regarding claims 37 and 38, Ansmann teaches 0.1-5% cationic polymer such as modified cellulose (a polysaccharide).

Regarding claim 40, Ansmann teaches a particle size of 12-14 μm .

Regarding claim 41, it is assumed that the components used by Ansmann are essentially pure and are, therefore, free of water.

Regarding claim 42, Ansmann teaches that the composition may include active components (col. 6, lines 24-32).

Regarding claim 43, Ansmann teaches that the composition may include glycerol or propylene glycol (col. 8, lines 56-58), both of which are humectants.

Regarding claims 51-52, Ansmann teaches that the composition may be used as a body care preparation (col. 6, lines 24-32).

Claims 44-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ansmann in view of Fogel as applied to claim 24 above, and further in view of Bucheler, et al. (U.S. Patent No. 4,996,004).

Ansmann in view of Fogel teaches the claimed dispersion, including the use of a polymer, but it fails to teach the claimed production method.

However, Bucheler teaches a preparation method for stable cosmetic dispersions of organic substances in water with fine particle size control. This preparation method consists of (1) creating a preliminary emulsion of melted wax and water and (2) spraying this preliminary emulsion into a cooling tank filled with water below the melting point of the solid (col. 5, lines 42-58).

Bucheler also teaches that this method confers several efficiency advantages over convention homogenizers. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Bucheler to produce the composition of Ansmann in order to maximize process efficiency while producing a stable cosmetic preparation.

Regarding claim 45, Bucheler teaches a homogenization step for the pre-emulsion prior to introduction to the cooling tank (col. 3, lines 56-68).

Regarding claim 46, Bucheler teaches a cooling step for the pre-emulsion before adding it to the cooling tank (col. 6, lines 7-11).

Regarding claim 47-48, Bucheler teaches the addition of the desired emulsifier to the pre-emulsion before addition to the cooling tank (col. 5, lines 42-58). Ansmann teaches the use of a polysaccharide as the emulsifier (col. 8, lines 25-34).

Regarding claim 49, Bucheler teaches the use of a pressure nozzle for homogenization.

Response to Arguments

Applicant's arguments filed 8/2/2010 have been fully considered but they are not persuasive.

Applicant argues that the wax phase of the compositions disclosed by Ansmann have a melting point above 50°C. The Examiner states that, according to the instant specification, the dialkyl ether and emulsifier disclosed by Ansmann are part of the wax phase. Here, Ansmann discloses compositions comprising 1% by weight of distearyl ether (i.e., dialkyl ether) and 15% by weight of lauryl glucoside (i.e., emulsifier).

Applicants submit that the melting point of distearyl ether is about 64°C, and that the melting point of lauryl glucoside is about 77°C. In turn, the wax phase disclosed by Ansmann would necessarily have a melting point above 50°C.

Examiner respectfully traverses. Although one specific composition comprising 1% by weight of distearyl ether (i.e., dialkyl ether) and 15% by weight of lauryl glucoside (i.e., emulsifier) would result in a melting point above 50°C, this is not the only composition Ansmann teaches.

Ansmann, col. 2 lines 13-16, teaches typical examples are dilauryl ether, dimyristyl ether, dicetyl ether, diisostearyl ether, dioleyl ether, dibehenyl ether and dierucyl ether.

As referenced by Young et al (2844534), col. 1 lines 44-46, Young teaches dicetyl ether (C₁₆H₃₃)₂O, has a melting point of 131°F (55°C). and didodecyl ether, (C₁₂H₂₅)₂O has a melting point of 90°F (32°C).

As disclosed in the instant claims, claim 1 teaches a wax phase with a melting point in the range of from above 25°C to ABOUT 50°C.

Dicetyl ether (C₁₆H₃₃)₂O, having a melting point of 131°F (55°C) can be considering ABOUT 50°C.

Further, Ansmann teaches the emulsifier can be an alkyl ether sulfate. One common alkyl ether sulfate known in the art is sodium lauryl ether sulfate. As disclosed by MSDS (2000), MSDS teaches sodium lauryl ether sulfate having a melting point/melting range from 10-15°C.

Therefore, it would be possible that the wax phase disclosed by Ansmann could have a melting point in the range of from above 250C to about 50oC.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **STEFANIE COHEN** whose telephone number is (571)270-5836. The examiner can normally be reached on Monday through Thursday 9:3am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Melvin Curtis Mayes can be reached on 5712721234. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Stefanie Cohen

10/2/2010

SC

October 5, 2010

/Melvin Curtis Mayes/
Supervisory Patent Examiner, Art Unit 1732